

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARMEN SANCHEZ	:	CIVIL ACTION
	:	
v.	:	NO. 06-2602
	:	
MICHAEL J. ASTRUE, ¹	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 29th day of March, 2007, upon consideration of the cross-motions for summary judgment² filed by the parties (Doc. Nos. 8 and 9), the court makes the following findings and conclusions:

1. On April 16, 2003, Carmen Sanchez ("Sanchez") filed for supplemental security income ("SSI") under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383f, alleging an onset date of October 10, 1998.³ (Tr. 48-49). Throughout the administrative process, including an administrative hearing held on February 8, 2005 before an administrative law judge ("ALJ"), Sanchez' claims were denied. (Tr. 7-9; 15-32; 38; 41-45). Pursuant to 42 U.S.C. § 405(g), Sanchez filed her complaint in this court on June 19, 2006.

2. In his decision, the ALJ concluded that Sanchez had severe impairments consisting of carpal tunnel syndrome and mitral valve prolapse. (Tr. 20 ¶ 1; 31 Finding 2).⁴ The ALJ further concluded that Sanchez' alleged depressive disorder, plantar spurs, migraines, and obesity have no more than a minimal effect on Sanchez' ability to work. (Tr. 20 ¶¶ 2- 21 ¶¶ 3). Ultimately, the ALJ concluded that Sanchez' impairments did not meet or equal a listing, that she had the residual functional capacity ("RFC") to perform a limited range of light and sedentary work, and that she was not disabled. (Tr. 21 ¶ 5; 24 ¶¶ 1-2; 31 ¶ 2; 31 Finding 3; 32 Finding 8).

3. The Court has plenary review of legal issues, but reviews the ALJ's factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm'r of Soc. Sec., 181 F.3d 429, 431 (3d. Cir. 1999) (citing 42 U.S.C. § 405(g)). Substantial evidence is "such

¹On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d)(1), Michael J. Astrue has been substituted for former Commissioner Jo Anne Barnhart as the defendant in this lawsuit.

²The procedural order provides that plaintiff shall file a brief and statement of issues in support of request for review and defendant shall file a response to request for review of plaintiff. (Doc. No. 5). Thus, the court will so construe the parties' cross-motions for summary judgment (Doc. Nos. 8 and 9).

³Sanchez filed three previous applications for SSI in 1983, 2001, and 2003, all of which were denied and not appealed. (Tr. 18).

⁴ All numbered paragraph references to the ALJ's decision begin with the first full paragraph on each page.

relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). It is more than a mere scintilla but may be less than a preponderance. See Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988). If the conclusion of the ALJ is supported by substantial evidence, this court may not set aside the Commissioner’s decision even if it would have decided the factual inquiry differently. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999); see 42 U.S.C. § 405(g).

4. Sanchez raises three arguments in which she alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally erroneous. Because the Commissioner did not apply the proper legal standards and because her determination is not supported by substantial evidence, I must remand to allow the Commissioner to conduct the proper analysis.

A. Sanchez contends that the ALJ erred in finding that her depression was not severe. “An impairment or combination of impairments can be found ‘not severe’ only if the evidence establishes a slight abnormality or a combination of slight abnormalities which have ‘no more than a minimal effect on an individual’s ability to work.’” Newell v. Comm’r, 347 F.3d 541, 546-547 (3d Cir. 2003) (quoting SSR 85-28). The step two determination is a *de minimus* screening device under which any doubt should be resolved in favor of the claimant. Id.; McCrea v. Comm’r, 370 F.3d 357, 361 (3d Cir. 2004). In making his step two determination, the ALJ noted that Sanchez had been treated for depression and that Sanchez’ treating psychiatrists and therapists consistently determined that Sanchez had major depressive disorder and a GAF score of 60, denoting moderate symptoms or moderate difficulty in social, occupational, or school functioning. (Tr. 20 ¶3). The ALJ stated that a “consultative examiner” found Sanchez had moderate limitations interacting appropriately with the public, supervisors, and co-workers and was moderately affected in responding appropriately to work pressures in usual work settings and to changes in routine work settings. (Id.) However, those findings were made by Maribel Arien, M.P.A., M.D. (“Dr. Arien”), Sanchez’ treating therapist, in a medical source statement of ability to do work-related activities (mental). (Tr. 191-93). The ALJ is correct in noting that the state agency psychological consultant found Sanchez had mild to no restrictions as a result of the depression and Dr. Arien noted that Sanchez stated her depression was a consequence of her four surgeries and her deficiencies in functioning with her hands.⁵ (Tr. 20 ¶3; 186; 204). However, substantial evidence does not support the ALJ’s finding that Sanchez’ depression does not meet the *de minimus* standard. Thus, on remand the ALJ should carefully consider and weigh all of the evidence in the record regarding Sanchez’ depression in making his step two determination.

B. Since the ALJ did not appear to give full consideration to the record before him, the court will not make a ruling on Sanchez’ remaining arguments that the hypothetical failed to include Sanchez’ mental limitations and that the ALJ failed to follow the requirements of Social Security Ruling 00-4p. The ALJ is directed to reevaluate these issues once he has fully examined the record in accordance with the proper procedures and legal standards.

Upon careful and independent consideration, the record reveals as above analyzed that the

⁵The court notes that although the ALJ listed this evidence, he did not weigh the evidence in his decision.

Commissioner did not apply the correct legal standards and that the record does not contain substantial evidence to support the ALJ's findings of fact and conclusions of law. As a result, the action must be remanded to the Commissioner under sentence four of 42 U.S.C. § 405(g).

Therefore, it is hereby **ORDERED** that:

1. The request for judicial review by Carmen Sanchez is **GRANTED** to the extent that the matter is **REMANDED** for further proceedings consistent with this order and **JUDGMENT IS ENTERED REVERSING THE DECISION OF THE COMMISSIONER OF SOCIAL SECURITY** for the purposes of this remand only; and
2. The Clerk of Court is hereby directed to mark this case closed.

LOWELL A. REED, JR., S.J.